

RESOLUTION NO. 75102

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ FINDING AND DECLARING THAT EACH OF THE CONDITIONS REQUIRED UNDER CALIFORNIA CIVIL CODE SECTION 1002 APPEAR TO EXIST AND CONSENTING TO THE ACQUISITION OF A TEMPORARY RIGHT OF ENTRY BY EMINENT DOMAIN ON ADJACENT PROPERTY LOCATED AT 440 NORTH FIRST STREET BY THE RYLAND MEWS HOMEOWNERS ASSOCIATION

WHEREAS, the Ryland Mews Homeowners Association (“Ryland HOA”) requested that the Council consent to the use of eminent domain, as defined under California Civil Code Section 1002 (“Section 1002”), to acquire a temporary right of entry over a portion of the adjacent property at 440 North First Street (“Adjacent Property”) to complete repair work on the exterior of the Ryland Mews condominium project located at the 400 block of First Street (“Ryland Mews”); and

WHEREAS, the Ryland HOA has requested a temporary right of entry to use up to 22 parking spaces in the parking lot of the Adjacent Property located at 440 North First Street. The applicable spaces would be used to erect scaffolding to apply an elastomeric coating to prevent future water intrusion in Ryland Mews and to provide access to and from such scaffolding; and

WHEREAS, pursuant to Section 1002, the power of eminent domain may be exercised by a private property owner to acquire a temporary right of entry upon adjacent property to repair or reconstruct land or improvements if certain conditions are established or met; and

WHEREAS, it appears there is a necessity to do the repair at Ryland Mews to prevent further water intrusion into the Ryland Mews exterior masonry walls and there is a great necessity to enter upon the Adjacent Property to do the repair work because (A) the

cost of performing the repair work without entry would be substantially higher; and (B) the Ryland Mews property without repair adversely affects the health and welfare of hundreds of residents; and

WHEREAS, it appears that the right to enter upon the Adjacent Property will be exercised in a manner which provides the least damage to the Adjacent Property and the least inconvenience or annoyance to the occupants and owners thereof consistent with satisfactory completion of the repair work; and

WHEREAS, it appears that the hardship to the Ryland HOA, if the power of eminent domain is not exercised, clearly outweighs any hardship to the owner and occupants of the Adjacent Property; and

WHEREAS, pursuant to California Code of Civil Procedure Section 1245.350, the City Attorney's Office provided the Adjacent Property owner written notice of the public hearing on this matter by first class mail not less than fifteen days prior to the date of the hearing; and

WHEREAS, a public hearing was conducted on September 1, 2009.

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NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

Based on the findings set forth in the memorandum dated August 21, 2009, the Council finds and declares that each of the conditions required under California Civil Code Section 1002 appear to exist and consents to the acquisition of a temporary right of entry by eminent domain on adjacent property located at 440 North First Street by the Ryland Mews Homeowners Association.

ADOPTED this 1st day of September, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk